

This letter discusses the basis of the Use Tax collected by a “retailer maintaining a place of business in Illinois” who is required to collect Use Tax from his customer. See 86 Ill. Adm. 150.105. (This is a GIL.)

January 7, 2005

Dear Xxxxx:

This letter is in response to your letter dated January 13, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is regarding a GIL you drafted for sales and use tax treatment of modular home sales in Illinois (IL). A copy of that GIL is enclosed.

In the third paragraph on page 3 of the GIL you address the situation where the seller does not have a contract to permanently affix the modular home to real estate. In such cases, you state that the IL purchaser will owe use tax and the out of state seller would generally collect and remit that tax (presumably if they have nexus).

Can you clarify what the tax base is that the use tax is calculated on? Is it a fixed percentage of the home sale (50%, 100%, etc.)? Or is it a portion of the sales price that represents the sellers cost of materials?

Thank you in advance for your assistance. Please call me with any questions.

DEPARTMENT’S RESPONSE:

You have inquired as to the basis of the Use Tax to be collected based on a discussion in the Department’s General Information Letter ST-03-0184-GIL. In the instance you have described, the

basis on which the seller collects the Use Tax is 6.25% of the selling price of the modular home. (See 86 Ill. Adm. Code 150.105). The seller in this instance is required to collect Use Tax if he is considered a "retailer maintaining a place of business in Illinois." For more information on this, please see 86 Ill. Adm. Code 150.801.

In some instances an out-of-State retailer will not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax liability on the purchase of the goods and have a duty to self-assess and remit their Use Tax liability directly to the State. In this instance also, the basis of the Use Tax is 6.25% of the selling price of the modular home.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk